

Agency Process Guide ([OAR 125-155-0400](#))

Purpose: Contractors may not operate state vehicles. Occasionally, Agencies may need an independent contractor to operate a state vehicle to fulfill an official state business need. Agencies may apply to DAS RM for a rule variance allowing the contractor to do so. (See [VUAT-5](#) for DAS RM variance process.) This document outlines the additional process the agency uses when an independent contractor will use a state vehicle to perform state business.

Caveat: Authorizing an independent contractor to drive a State vehicle while on State business does not make the contractor an “agent” of the State. The contractor assumes all risks related to operating a state vehicle. The state’s self-insurance coverage does not apply.

Step 1: Agency prepares a written justification (for the contractor to drive a State vehicle) that:

- Answers the following questions.
 - Why conduct state business this way?
 - Are there other options? What are they? What makes them less desirable than the contractor driving the state vehicle?
 - What is benefit to agency? Or to the state?
- Is adequate to defend decision/action.

Step 2: Secure approval from the vehicle owner in writing.

- Approval authority resides with DAS Fleet or agency fleet manager responsible for vehicles agency owns.

Step 3: Prepare written contract that:

- Allows a contractor to be considered a “permitted contract driver”.
- Specifies conditions under which the contractor can remain a “permitted contract driver”.
- Includes other applicable clauses and/or insurance coverage related to the activities expected of the contractor under the contract.
- Documents the contractor’s agreement to:
 - Comply with the Vehicle Use and Access Rules, [OAR 125-155](#).
 - Drive state vehicle(s) lawfully, safely, and courteously.
 - Cite the exchange of value for use of the vehicle.
 - Comply with and limit activities performed while using the vehicle to those specifically allowed under the contract.
 - Obtain, at their own expense, and provide proof of commercial automobile liability (including physical damage and collision—or the **self-insurance equivalent***) and property insurance covering the state vehicle(s) within their care, custody, or control while performing duties specified in the contract.
 - Maintain said vehicle liability and property insurance for the term of the contract.
 - Name the state as an additional Insured under the automobile liability coverage.

RISK MANAGEMENT

- Ensures the above coverages:
 - Extends to all contractor's employees, agents, and officers while operating state vehicle(s) in the course of performing duties outlined in the contract.
 - Is primary over, and non-contributory with, any other applicable insurance or self-insurance*.
 - Is sufficient to cover the actual cash value of any state vehicle(s) in the contractor's care, custody, and control.
 - Includes a non-owned physical damage insurance component, which is required, primary, and non-contributory with any other insurance and **self-insurance***.
 - Names the state as a Loss Payee under any non-owned physical damage provision.
- Requires they promptly investigate citizen reports provided by DAS RM through the contracting agency and submit a written response back to DAS RM through the contracting agency within 10 business days.
- Makes the contractor responsible for addressing/resolving any violations, citations, tickets, fines, or charges related to the unlawful operation or use of the vehicle.
- Require the contractor garage/park the vehicle in a safe and secure location.
- Is responsible for any misuse of the vehicle while it is in their possession or control.
- Returns the vehicle in good repair and working condition.
- Indemnifies and holds the state harmless for any loss or damage to, or liability arising out of the use of, any state vehicle in their care, custody, or control
(Contact your Department of Justice representative to determine the appropriate contract language.)

Step 4: Consult [OAR 125-155-0800](#) and Vehicle Use Toolkit ([VUAT-5](#)) for guidance and submit a request for rule variance:

- To DAS RM.
- At least 30 days prior to the activity/need resulting in the request for variance.
- Promptly provide additional information/documents if needed.
- Comply with variance decision, recommendations, and/or conditions from DAS RM.
- Do not allow contractor to operate a state vehicle pending receipt of the rule variance decision.

Step 5: Monitor contractor for compliance with provisions of contract and conditions (if any) of rule variance.

*If a contractor presents **self-insurance** coverage, contact DAS Risk Management.